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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,367	12/31/2003	Timothy W. Vanderveen	IVACP 58467	1190
24201	7590	09/27/2006	EXAMINER	
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045			BERTHEAUD, PETER JOHN	
			ART UNIT	PAPER NUMBER
			3746	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,367

Applicant(s)

VANDERVEEN ET AL.

Examiner

Peter J. Bertheaud

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/31/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 2, 4, and 7-10 are rejected under 35 U.S.C. 102(a) as being anticipated by Platt (U.S. Patent No. 6,572,604).

Platt discloses a method and a system for a drug infusion pump essentially as claimed, including for example, a pressure sensor (22) located upstream of an infusion pump (see col. 2, lines 51-55), the pressure sensor configured to provide pressure signals representative of the pressure within a fluid line (see col. 4, lines 48-50); a processor (24) configured to monitor a parameter representative of a status of the infusion pump and to sample the pressure signals received from the pressure sensor as a function of the status of the infusion pump (see col. 5, lines 45-52), and, if the sampled signals indicate a negative pressure in the fluid line, to provide an alert (see col. 4, lines 56-57). Platt also discloses that the infusion pump is a peristaltic pump (see col. 4, lines 19-28) and the monitored parameter is a value of the number of pump cycles the peristaltic pump has completed (see col. 5, lines 45-46), and that the processor periodically samples the signals received from the pressure sensor after a predetermined number of pump cycles have occurred (see col. 5, lines 45-52). Platt further discloses a method for his pump including; determining a value representative of

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the number of cycles that the have been completed by the infusion pump (see “predetermined number of cycles”, col. 5, line 46); sampling signals provided by a pressure sensor (22) configured to sense the pressure in a fluid line upstream of the infusion pump (see col. 2, lines 51-55); processing the signals to determine a value for the pressure in the upstream fluid line; and providing an alert if the pressure value is negative (see col. 4, lines 56-57). Platt’s method also discloses that sampling occurs only when a predetermined number of pump cycles have been completed (see col. 5, lines 45-52). Platt’s method further comprises: storing the value for the pressure in a memory; sampling the signals after and predetermined number of cycles have been completed; determining a second value for the pressure in the upstream fluid line; comparing the second value for the pressure to the first value for the pressure; and providing an alert signal if the second value is more negative than the first value (see col. 3, lines 25-34).

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

Thus the reference reads on the claims.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (U.S. Patent No. 6,572,604).

Platt, as applied above, discloses that the infusion pump is a peristaltic pump (see col. 4, lines 19-28) and that there is a parameter, a value of the number of pump cycles the peristaltic pump has completed (see col. 5, lines 45-46), monitored by the pump's processor.

Platt teaches that pump apparatus is susceptible to modifications and adaptations within the ability of those skilled in the art (see col. 6, lines 10-18). Therefore, although undisclosed, the processor could periodically sample the signals from the pressure sensor when the value of the monitored parameter exceeds a predetermined number of cycles.

Therefore it would have been obvious to one skilled in the art at the time of invention that the pump apparatus disclosed by Platt could process the pressure signals when the value of the monitored parameter exceeds a predetermined number of cycles, in order to create a continuous data feed, one that is more precise and can recognize trends more accurately.

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5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (U.S. Patent No. 6,572,604).

Platt, as applied above, discloses a method and a system for a drug infusion pump including; the infusion pump is a peristaltic pump (see col. 4, lines 19-28) and that a processor monitors a value, which is the number of pump cycles the peristaltic pump has completed (see col. 5, lines 45-46), and that the processor periodically samples the signals received from the pressure sensor after a predetermined number of pump cycles have occurred (see col. 5, lines 45-52).

Platt teaches that pump apparatus is susceptible to modifications and adaptations within the ability of those skilled in the art (see col. 6, lines 10-18). Therefore, because the number of predetermined pump cycles goes undisclosed, there is reason to believe this number could be three. Also, because a negative pressure in a system such as this one indicates an occlusion, there is inherently a venting problem somewhere.

Therefore it would have been obvious to one skilled in the art at the time of invention that the pump apparatus disclosed by Platt could indicate a vent problem when a negative pressure is present, and have a predetermined number of pump cycles of three, in order to warn someone quickly, after only a few pump cycles, that there may be vent problem with the pump.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These references are noted in the attached form 892.

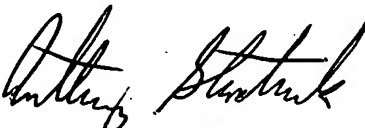
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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Bertheaud whose telephone number is (571) 272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PJB  
PJB

  
ANTHONY D. STASHICK  
PRIMARY EXAMINER